

TTAB

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

PUMA AG RUDOLF DASSLER SPORT,

Opposer,

v.

MOURAD, SAMIR DBA DON REGALON,

Applicant.

Opposition No. 123,141



10-06-2003

U.S. Patent & TMO/TM Mail Rcpt Dt. #22

APPLICANT'S MOTION FOR LEAVE TO REPLY AND REPLY TO OPPOSITION TO
APPLICANT'S MOTION FOR SUMMARY JUDGMENT AND APPLICANT'S OPPOSITION
TO OPPOSER'S CROSS-MOTION FOR SUMMARY JUDGMENT

Applicant, Samir Mourad, hereby requests leave of the Board to reply to Opposer's opposition to Applicant's motion for summary judgment of the above captioned Opposition proceeding. Applicant recognizes that the filing of reply briefs is generally discouraged. However, a reply brief is necessary in this case to permit Applicant to respond to new issues raised by Opposer in its opposition and to assist the Board in arriving at a just conclusion of the motion. See T.B.M.P. § 502.03; Trademark Rule 2.127(a).

Applicant also hereby opposes Opposer's Cross-Motion for Summary Judgment on the issue of likelihood of confusion between Applicant's above-listed mark and Opposer's marks asserted in its Second Amended Notice of Opposition.

As set forth in the accompanying Memorandum of Points and Authorities, Opposer has failed to rebut Applicant's argument that

Opposer is estopped from claiming there is a likelihood of confusion between its marks and Applicant's above-cited mark, and further that there is no likelihood of confusion. Opposer has been likewise unsuccessful in arguing that there exists no genuine issue of material fact in its own likelihood of confusion analysis. The facts actually point to no likelihood of confusion at all. As such, summary judgment in favor of Applicant must be granted, and summary judgment in favor of Opposer must be denied.

DATED: October 3, 2003

Respectfully submitted,

TROJAN LAW OFFICES

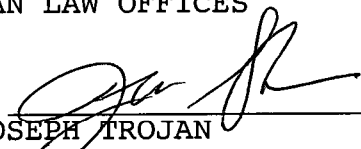
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I. INTRODUCTION

In this opposition to the registration of Trademark Application Serial No. 75/936,519, Opposer PUMA AG RUDOLF DASSLER SPORT, (hereinafter "Opposer") seeks to bar Applicant SAMIR MOURAD, doing business as DON REGALON (hereinafter "Applicant") from registering the trademark "V with Leaping Tiger Design" for clothing, namely, t-shirts, overalls, polo shirts, knit shirts, sweaters, belts, ties, pants, shirts, jackets, shorts, suits, socks, and underwear in International Class 025. The issues presented by this motion are as follows: First, not only does file wrapper estoppel apply to certain trademark cases, but it has been used by the Board to keep this Opposer from arguing a proposition opposite from its prior statements and assertions. Second, Opposer has failed to rebut Applicant's argument in his motion for summary judgment that Opposer is estopped from claiming there is a likelihood of confusion between its marks and Applicant's above-cited mark, and that there is no likelihood of confusion. Further, Opposer has been wholly unsuccessful in arguing that it is entitled to summary judgment on that very issue as there are several genuine issues of material fact present in its likelihood of confusion analysis, all of which point to the fact that there is actually NO likelihood of confusion at all.

II. PROCEDURAL AND FACTUAL BACKGROUND

Applicant, Samir Mourad is the owner of United States Trademark Registration No. 2,500,926 (hereinafter "the '926

registration") for the word mark VARESSI registered October 23, 2001 for clothing, in use in commerce since at least as early as July 2000; United States Trademark Registration No. 2,750,752 (hereinafter "the '752 registration") for VARESSI JEANS with a tiger's head design encircled in a Greek key design, registered August 12, 2003 for clothing, used in commerce since at least as early as March 2000; Serial No. 75/936,519 (hereinafter "the '519 application") for a V with a leaping tiger design, used in commerce since at least as early as January 2000, and Serial No. 75/936,520 (hereinafter "the '520 application") (being separately opposed by Opposer in proceeding No. 152,132) for VARESSI with a leaping tiger design, used in commerce since at least as early as January 2000, which is the subject of this Opposition. See ¶ 2, Declaration of Samir Mourad in Support of Applicant's Motion for Summary Judgment (Hereinafter "Mourad Dec."). Applicant sells clothing bearing the above marks. More specifically Applicant sells shirts patterned with either emblems or checkers, and colored jeans. See ¶2, Declaration of Jessica J. Slusser in Support of Applicant's Reply and Opposition (hereinafter "Slusser Dec,").

Applicant's emblem shirts contain all four of the above-mentioned marks owned by applicant. The '752 registration is found on the hangtags, the '926 registration is on the hangtags and on the label sewn inside the shirts, the '519 application is incorporated in the emblems in the fabric of the shirts and the '520 application is on the hangtags. Applicant's jeans contain the

519 application on a leather patch on the back, the '752 registration on the hangtags and the '926 registration on the hangtags and on the label sewn inside the jeans. Finally, Applicant's checkered shirts contain the '752 registration on the hangtags and the '520 application on a label sewn inside the shirt. See ¶ 3, Slusser Dec.

On August 9, 2002, Opposer filed for leave to amend its Notice of Opposition to include its U.S. Registration No. 2,734,292 for "D" with leaping puma mark used, according to Opposer in its brief opposing Applicant's motion for summary judgment, in the U.S. on footwear since 1997, as well as its "P" with leaping puma mark (no application for U.S. registration has been filed for this mark), which was apparently used on T-shirts in the U.S. beginning July 2001. See p. 5 of Opposer's Opposition and Cross-Motion for Summary Judgment (hereinafter "Opposer's Brief"). The Board granted Opposer's motion to amend in an order dated March 5, 2003.

**III. FILE WRAPPER ESTOPPEL IS APPLIED IN SOME TRADEMARK CASES, AND
IN FACT HAS BEEN APPLIED AGAINST THIS OPPOSER FOR THE VERY SAME
INCONSISTENT STATEMENTS IN THE PAST**

Opposer asserts that file wrapper estoppel does not apply in inter partes trademark cases. On the contrary, although it is not an absolute rule of evidence in trademark proceedings, it can be applied. See J. Thomas McCarthy, 3 McCarthy On Trademarks and Unfair Competition, §23.111. The Board and the courts have given

varying degrees of weight to prior inconsistent statements made in ex parte applications, and many times have held that file wrapper estoppel did apply to a certain factual scenario. See Kay Corporation v. Westfield's, Inc., 190 U.S.P.Q. 565 (T.T.A.B. 1976); Plus Products v. natural Organics, Inc., 223 U.S.P.Q. 27, 1984 WL 33 (S.D.N.Y. 1984); Petro Stopping Centers, L.P. v. James River Petroleum, Inc., 130 F.3d 88 (C.A. 4 1997). The cases relied upon by Opposer supporting its proposition are factually distinguishable from the present scenario.

The Board, in The Goodyear Tire & Rubber Company v. A.J., stated that file wrapper estoppel was inapplicable in that case because of the nature of trademark rights in contrast with the particular statement made during prosecution. The prior statement in question was the opposer's express recognition of the applicant's superior rights in "DOUBLE EAGLE" for golf carts, and that opposer's marks were weak and could not be broadly protected. In disallowing the file wrapper estoppel argument, the Board reasoned that the trademark statute recognizes that rights can be acquired in descriptive marks as a result of use, therefore, a statement made in furtherance of registration cannot control rights acquired by extensive use thereof, i.e., a mark can increase in stature and what was originally descriptive and weak can become distinctive and strong and the scope of protection afforded thereto can become greater, rather than limited. See The Goodyear Tire & Rubber Company v. A.J., 165 U.S.P.Q. 665, 668 (T.T.A.B. 1970). In short, because the nature and scope of

trademark rights can change over time with use in commerce and recognition by the public, the Board did not allow any prior statements regarding the mark's strength at one period in time to be used against the owner thereof at a different point in time. *Id.*

The other two cases Opposer relies on, namely, Giant Food, Inc. v. Standard Terry Mills, Inc., 229 U.S.P.Q. 955, 958 (T.T.A.B. 1986) and Allstate Life Insurance Company v. Cuna International, Inc., 169 U.S.P.Q. 313, 316 (T.T.A.B. 1971) cite Goodyear Tire as authority for their assertions that file wrapper estoppel is not applicable to trademark cases.

However, the case at bar is easily distinguishable. Here, Opposer's prior statement was regarding the differences between its leaping puma design (what became Registration No. 1,039,274, hereinafter "the '274 mark") and a prior registrant's leaping tiger design and TIGER word mark in order to gain registration. Opposer stated, "The mark is intended to show a leaping puma, rather than a tiger." The leaping puma design in Opposer's mark at the point in time of the statement was the same as it is today in appearance. Likewise, Applicant's mark is a leaping tiger rather than a puma, as were the prior registrations cited against Opposer. The distinction that existed between the two leaping cats, which was enough to overcome a likelihood of confusion rejection by the Examiner, still exists today. Opposer must not be allowed to argue to the contrary in the instant proceeding to

gain a monopoly over every leaping feline used on clothing. See In re Kopy Kat, Inc., 182 U.S.P.Q. 372 (C.C.P.A. 1974).

The Board did not allow Opposer to get away with this identical argument in Opposition No. 91,073,446¹, wherein it granted summary judgment on the *very same issues* in favor of Applicant The Greyhound Corporation on July 21, 1987. The case at bar is a prime example of when the Board *has and should* use file wrapper estoppel to keep an over-zealous and aggressive Opposer from conveniently arguing opposite propositions to suit its fancy.

**IV. EVEN IF PRIOR INCONSISTENT STATEMENTS MADE BY OPPOSER DO NOT
CREATE ESTOPPEL, THE STATEMENTS ARE IMPORTANT EVIDENCE AS TO THE
TRUTH OF OPPOSER'S ASSERTIONS**

Alternatively, the Board must at least recognize that Opposer's assertions made during prosecution of its '274 mark constitute an **admission** that its puma marks are readily distinguishable from other leaping felines such as the prior registrations cited against its original application, as well as Applicant's '519 application. As set forth by the Court of Customs and Patent Appeals, an evaluation of likelihood of confusion should consider the market interface between the applicant and the owner of a prior mark which may involve, for instance, a consent to register or use the mark at issue. See In

¹ The Greyhound Corporation's successful motion for summary judgment also argued that Opposer should be estopped from arguing to the contrary after its stance in the Slazengers, Ltd. opposition, and Opposer's decision not to oppose registration of Pennsylvania State University's lion mark.

re du Pont Nemours & Co., 476 F.2d 1357, 177 USPQ 563 (CCPA 1973).

According to the de Pont court, significant weight should be given to detailed agreements which evidence the parties knew of likelihood of confusion:

[t]hus when those most familiar with use in the marketplace and most interested in precluding confusion enter agreements designed to avoid it, the scales of evidence are clearly tilted. It is at least difficult to maintain a subjective view that confusion will occur when those directly concerned say it won't. A mere *assumption* that confusion is likely will rarely prevail against uncontroverted evidence from those on the firing line that it is not.

Id at 1363 (emphasis original). Thus, a consent agreement between competitors well acquainted with the realities of business is generally good evidence that there is no likelihood of confusion. In re N.A.D. Inc., 754 F.2d 996, 224 USPQ 969 (Fed. Cir. 1985).

In the instant case, Opposer's admission that a leaping puma is distinguishable from a leaping tiger must be considered evidence of its consent for others to register leaping tigers for clothing, because there will be no likelihood of confusion. See EZ Loader Boat Trailers, Inc. v. Cox Trailers, Inc., 213 U.S.P.Q. 597, 1982 WL 52013 (T.T.A.B. 1982), *aff'd* 706 F.2d 1213, 217 U.S.P.Q. 986 (Fed. Cir. 1983) (prior inconsistent statements constitute admissions and may be considered evidence of the truth of the assertions therein). Similarly, evidence of the withdrawal of Slazengers Limited's opposition to registration of Opposer's '274 mark, as well as Opposer's much postponed election not to oppose Pennsylvania State University's application (which issued as Registration No. 1,350,286) must be treated as evidence of

Opposer's assertions that there is no likelihood of confusion between the various cat marks, and its consent to registration of other cat-type marks for clothing.

V. OPPOSER HAS FAILED OVERCOME APPLICANT'S ASSERTIONS OF
NO LIKELIHOOD OF CONFUSION, AND IS CERTAINLY NOT
ENTITLED TO SUMMARY JUDGMENT IN ITS FAVOR

Applicant has fully briefed the issue of no likelihood of confusion in its motion for summary judgment filed July 11, 2003. In its responsive brief Opposer has failed to rebut Applicant's argument that there is clearly no likelihood of confusion in this case, nonetheless it has cross-moved for a summary judgment holding of likelihood of confusion. The following is in reply to Opposer's opposing arguments and in opposition to its cross-motion for summary judgment.

A. OPPOSER'S "P WITH LEAPING PUMA DESIGN" MARK DOES NOT
HAVE PRIORITY OF USE OVER APPLICANT'S MARK AT ISSUE

Opposer claims that priority of use is not an issue in this opposition proceeding. That claim is convenient, but it is not the case. Over Applicant's objections, Opposer fought to amend its Notice of Opposition to rely on its unregistered "P" with leaping puma mark. Opposer has stated on many occasions that it began use of this mark in commerce on T-shirts in the U.S. in July of 2001. See p. 5, Opposer's Brief. On the other hand, Applicant

commenced use of the mark covered by its '519 application at least as early as January 10, 2000. See ¶ 7 and 8, Slusser Dec. Therefore, Opposer does not have priority of use of all marks listed in its Second Amended Notice of Opposition, and the issue of priority of use is by no means easily resolved in Opposer's favor.

B. THE RELEVANT DU PONT FACTORS POINT TO
NO LIKELIHOOD OF CONFUSION

1. According To Opposer's Own Assertions
The Marks Are Not Similar Enough
To Cause Confusion

Opposer states that although most of its marks contain a puma leaping from right to left, in the opposite direction of the tiger in Applicant's '519 application, Opposer has used a mark with a cat leaping from left to right. However, it is not apparent to Applicant where Opposer has listed such a mark in its Notice of Opposition.

Further, Opposer argues that Applicant's tiger has no stripes and therefore the public is not able to distinguish it as a tiger versus any other leaping cat. On the contrary, Applicant uses his entire family of marks, including the '752 registration with a tiger's face with stripes, all on the *same articles of clothing*. See ¶ 3, Slusser Dec. Thus, the purchasing public sees a hangtag bearing the '752 mark of a tiger's face on the same shirt that has

a leaping tiger incorporated in the emblems on the fabric, and the same jeans that bear a leaping tiger on the patch. If a purchaser is not already familiar with Applicant's family of marks, and many are, he or she will not be confused as to whether or not the leaping cat in the fabric, or on the patch is a tiger because the tiger's face is also on the hangtag of the same article of clothing. See ¶ 3, Slusser Dec. In fact, Applicant's clothing is extremely well marked. As explained above, his emblem shirt bear all four of his different marks, his jeans bear three different VARESSI marks, and his checkered shirts bear two separate source identifying marks. See ¶ 3, Slusser Dec. The public is not likely to be confused as to what kind of cat appears in Applicant's marks, nor would it wonder as to the source of Applicant's clothing.

Further, although Opposer claims that Applicant's addition of a "house mark" or trade name to a mark does not avoid confusion, however, McCarthy teaches that a junior user's addition of a house mark to a possibly infringing mark of the senior user has the potential to reduce or eliminate likelihood of confusion. See Fuddruckers, Inc. v. Doc's B.R. Others, Inc., 826 F.2d 837, n.13, 4 U.S.P.Q.2d 1026 (9th Cir. 1987) (use of differing names or distinctive logos in connection with similar marks can reduce the likelihood of confusion); Worthington Foods, Inc. v. Kellogg Co., 732 F. Supp. 1417, 14 U.S.P.Q.2d 1577 (S.D. Ohio 1990) (Since a house mark is part of the mark as a whole, it must be considered in judging overall similarity. The display of a company's own

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familiar mark on a product reduces the likelihood of confusion which might stem from the simultaneous use of another's mark.) In the present case, the dominant feature of the mark is V, and the dominant feature of the Applicant's family of marks is VARESSI or V and not the tiger, leaping or straight on. The addition to Applicant's brand name VARESSI or the shortened version V eliminates any possibility of confusion with Opposer's marks.

2. The Goods Are Simply Not Similar

Applicant has provided ample evidence that it only sells button-up shirts and colored jeans marketed to the Latin community. See ¶ 5-6 and 8, Mourad Dec. Opposer has likewise given abundant evidence that it sells no such items. See Exhibits 5-10 and 12, Opposer's Brief. The reality is that the goods are not in any way similar such that they are likely to cause anyone confusion as to the source of the clothing.

3. Trade Channels Are Unmistakably Not Similar

During prosecution of a trademark application perhaps there are no restrictions or limitations in the party's identification of goods. However, in inter partes proceedings such as the instant opposition, Applicant has produced substantial evidence of the trade channels through which his goods travel. See ¶ 8, Mourad Dec. The simple fact is that Applicant markets and sells clothing with a Latin flavor to the Latin community. Opposer does not.

10/09/2023
4. The Purchasers Of The Goods At Issue Are Sophisticated Enough
To Recognize The Difference In The Marks

Opposer claims that the goods sold by Applicant and Opposer are relatively inexpensive and frequently replaceable. Applicant's emblem shirts cost retail customers \$99.99. Likewise, Applicant's jeans run \$129.99. See ¶ 4 and 5, Slusser Dec. These are not cheap articles of clothing. A consumer who spends roughly \$130 on a pair of jeans is most likely a brand-conscious shopper who will certainly notice the brand of jeans he is purchasing for such a price, and probably does not buy a new pair of \$130 jeans every month.

Opposer also claims that purchasers of such "inexpensive and frequently replaceable" items are held to a lesser standard of purchasing care. For that contention, Opposer cites In re Martin's Famous Pastry Shoppe, Inc., 223 U.S.P.Q. 1289, 1290 (Fed. Cir. 1984). What Opposer fails to mention is that the Court in In re Martin's is talking about food. The In re Martin's Court says, "bread and cheese are staple, relatively inexpensive comestibles, subject to frequent replacement. Purchasers of such products have long been held to a lesser standard of purchasing care." (Emphasis added.) *Id* citing, Walter Baker & Co. v. Altamay Chocolate Co., 37 F.2d 957, 958, 4 USPQ 159, 161 (CCPA 1930) (trademarks for **chocolate** and **cocoa**); Specialty Brands, Inc. v. Coffee Bean Distributors, Inc., 748 F.2d 669, 223 USPQ 1281 (Fed. Cir. Nov. 21, 1984) (trademarks for **tea**). Purchasers of Applicant's and

Opposer's clothing are not unsophisticated shoppers buying staples at the grocery store and replacing them every week. They are buying \$100 shirts and \$130 jeans. They are not held to a lesser standard of purchasing care as Opposer argues, and they will not be confused between a puma and a tiger because they are brand conscious shoppers.

5. Even If Opposer Is Entitled To A Broad Scope Of Protection, There Is Not A Likelihood Of Confusion And Opposer Cannot Keep Applicant's Mark From Registering

Applicant does not dispute the fame Opposer's mark has achieved in its field. Opposer argues that trademark law dictates that famous marks are entitled to a wide scope of protection. However, the trademark rules do not allow trademark owners to form monopolies that circumvent competition.

The trademark may become a detrimental weapon if it is used to serve a harmful or injurious purpose. If it becomes a tool to circumvent free enterprise and unbridled competition, public policy dictates that the rights enjoyed by its ownership be kept within their proper bounds.

United States v. Timken Roller Bearing Co., 83 F. Supp. 284, 81 U.S.P.Q. 28 (D. Ohio 1949), modified, 341 U.S. 593, 95 L. Ed. 1199, 71 S. Ct. 971, 89 U.S.P.Q. 462 (1951). Thus, although Opposer may enjoy a wide latitude of legal protection for its PUMA and leaping puma design marks, its protection must be kept within the proper bounds. To allow Opposer a monopoly over all leaping

cat marks for clothing would circumvent free enterprise against the strong public policy of trademark law.

In this case, Applicant's mark is simply not similar enough to cause the public to confuse it with Opposer's. Applicant's cat is a tiger, Opposer's is a puma, a difference Opposer has used to distinguish its mark from other leaping tiger marks in the past. Likewise, the distinctive element of Applicant's mark is VARESSI or V, which is nothing like PUMA. Finally, the marks are used on totally different types of clothing bought by totally different purchasers in totally separate markets. Although Opposer's mark may cast a long shadow, Applicant's mark is still outside of the shade.

6. Third Party Registrations Are Evidence That Opposer Cannot Prevent Applicant From Using Its Leaping Tiger Mark Because Although Opposer May Have Rights To PUMA Marks, It Does NOT Have A Monopoly Over All Leaping Cat Marks

The ultimate test of relative strength of a trademark is its distinctiveness in the minds of the relevant customer group. A mark edged on all sides by similar marks on similar goods or services is not very distinctive. It is merely one of a crowd of marks. In a "crowded" field of similar marks, each member of the crowd is relatively weak in its ability to prevent use by others in the crowd. See Standard Brands, Inc. v. RJR Foods, Inc., 192 U.S.P.Q. 383, 385 (T.T.A.B. 1976). Opposer fiercely argues that

it enjoys a broad scope of protection. In support it lists its PUMA and leaping puma marks, and its long-time use thereof. However, the existence of multiple other registrations of leaping cats for wearing apparel is evidence that Opposer does not own a monopoly on all leaping cat marks, and that the public is not confused by their existence. To argue so would be absurd and totally against public policy and the gambits of intellectual property law. See In re Kopy Kat, 182 U.S.P.Q. 372 (registration does not grant the registrant the exclusive rights with respect to every development of the theme or every use of the words in the registered mark) (emphasis added). Opposer did not have the right to prevent 13 other applicants/registrants from registering leaping cat marks for clothing. Opposer does not have the right to do so here.


VI. CONCLUSION

For the foregoing reasons, Applicant's Motion for Summary Judgment must be granted and Opposer's Cross-Motion for Summary Judgment must be denied.

DATED: October 3, 2003

Respectfully submitted,

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SAMIR MOURAD

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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MOURAD, SAMIR DBA DON REGALON,

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Opposition No. 123,141

**DECLARATION OF JESSICA J. SLUSSER IN SUPPORT OF APPLICANT'S MOTION
FOR LEAVE TO REPLY AND REPLY TO OPPOSITION TO APPLICANT'S MOTION
FOR SUMMARY JUDGMENT AND APPLICANT'S OPPOSITION TO OPPOSER'S
CROSS-MOTION FOR SUMMARY JUDGMENT**

I, Jessica J. Slusser, declare as follows:


1. I am an attorney at law, duly licensed to practice law in the State of California and registered to practice before the United States Patent and Trademark Office. I am an associate of the Trojan Law Offices, the attorneys of record for Applicant, Samir Mourad, doing business as Don Regalon (hereinafter "Applicant"). I have personal knowledge of the facts stated herein. If called upon to do so, I could and would competently testify that:

2. I have been provided with samples of the clothing that bears Applicant's family of marks and they consist of patterned shirts (either emblems or checkers) and colored jeans.

3. I have observed that Applicant's family of marks are displayed on the goods in the following manner: Applicant's emblem

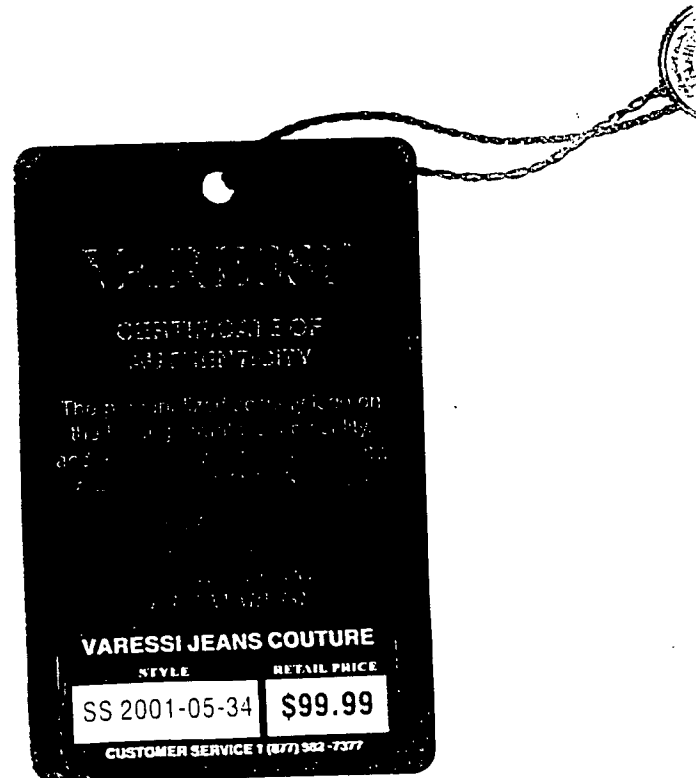
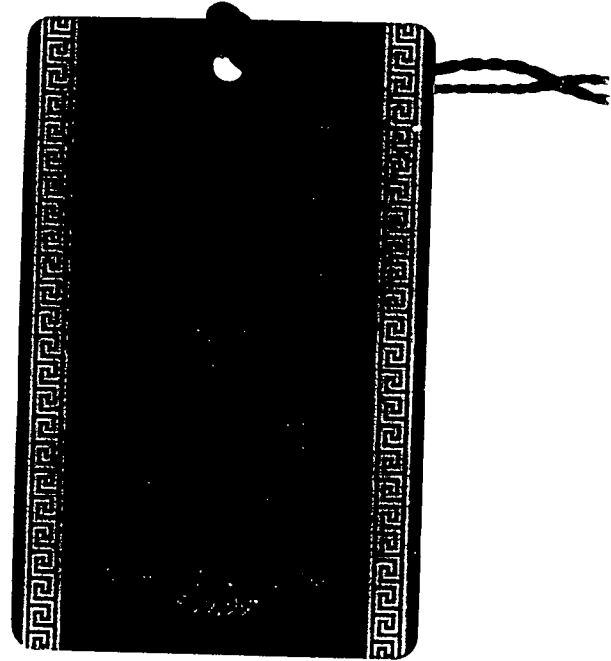
10/00/2003
I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed this __ day of October 2003 in Beverly Hills, California.

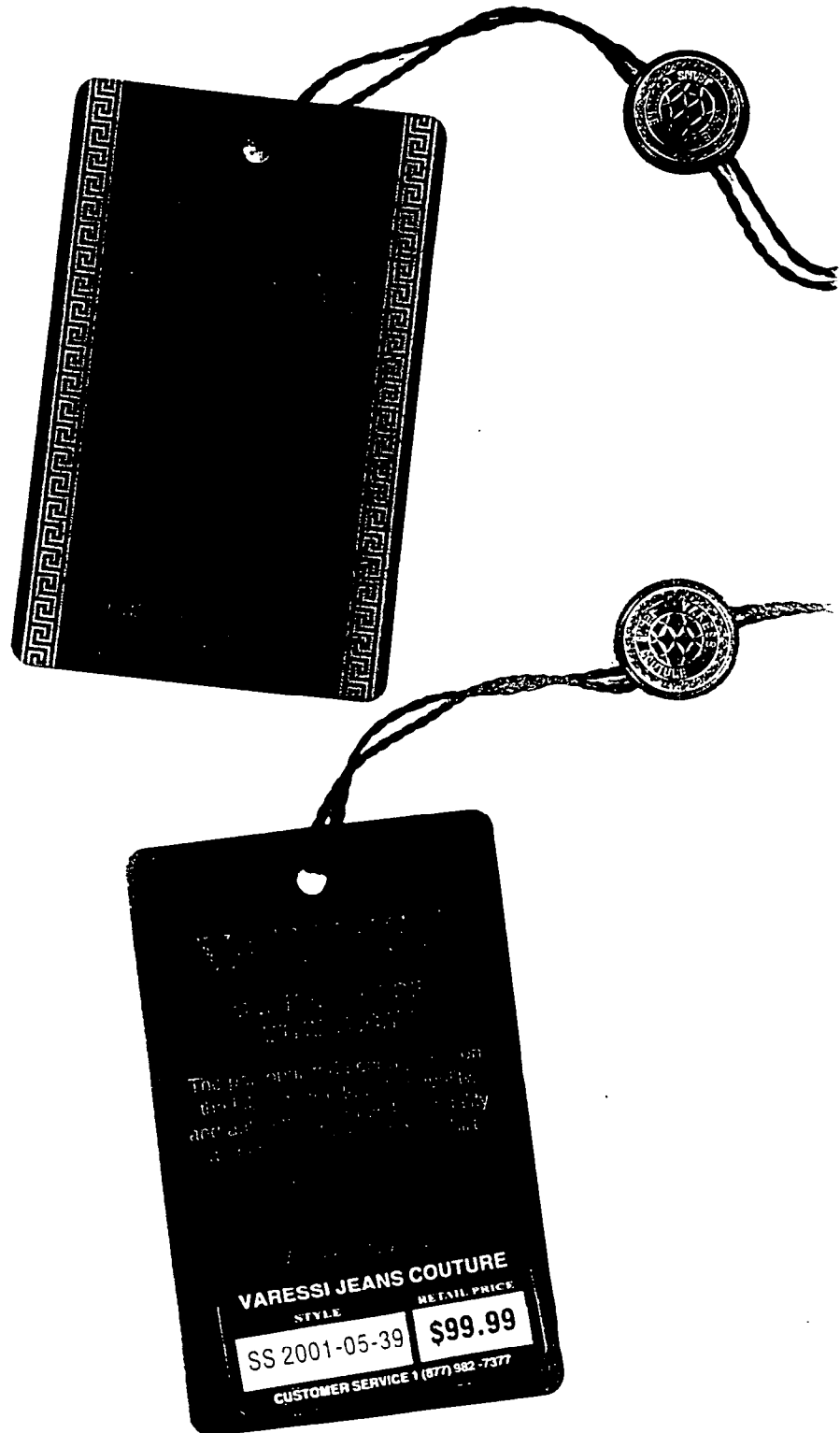


Jessica J. Slusser

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VARESSI
USA

We thank for the preference accorded and wishes to mention that this garment is the result of the many years experience of our best designers and technicians.

VARESSI
JEANS COUTURE

STYLE	SIZE
VJC 0106 NAVY	32x30

RETAIL PRICE
\$129.99



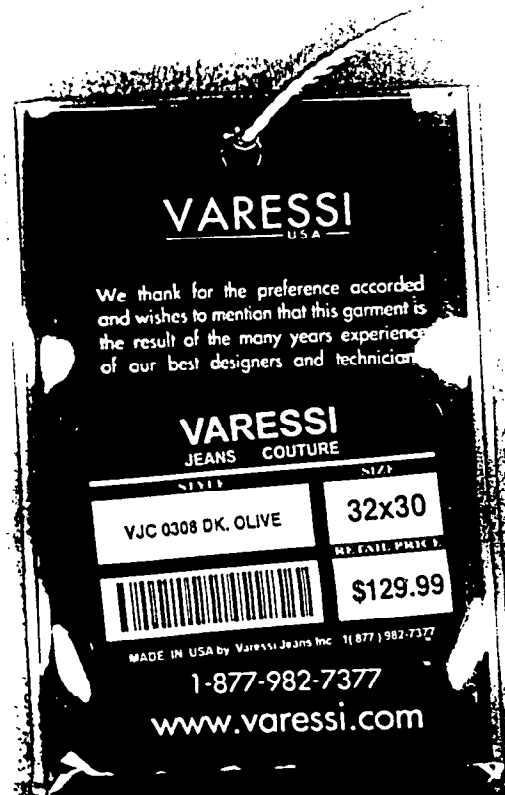
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10. These General Objections apply to all of Applicant's responses. To the extent that specific General Objections are provided because they are believed to be particularly applicable to the specific Interrogatories, they are not to be construed as a waiver to the General Objection(s) applicable to information falling within the scope of the Interrogatory.

11. The following responses reflect Applicant's present knowledge, information and belief, and may be subject to change or modification based on facts or circumstances which may come to Applicant's knowledge.

RESPONSES

INTERROGATORY NO. 1

For clothing sold by Applicant in U.S. commerce under Applicant's mark, state the following:

- (a) date of first sale or shipment in the U.S. of clothing bearing Applicant's mark;
- (b) dates of first three sales or shipments in U.S. commerce of clothing bearing Applicant's mark;
- (c) identity of the purchaser in the sales identified in response to (a) and (b) hereof;
- (d) manner and method of application of Applicant's mark to each item of clothing involved in the sales identified in response to (a) and (b) hereof;
- (e) list the states in which Applicant has sold clothing bearing Applicant's mark.

RESPONSE TO INTERROGATORY NO. 1

- (a) Approximately January 10, 2000 – Applicant's own retail store (Don Regalon, 8401 Van Nuys Blvd., Panorama City, CA 91402).
- (b) Approximately January 10, 2000 – Applicant's own retail store (Don Regalon, 8401 Van Nuys Blvd., Panorama City, CA 91402); July 9, 2000 – Tres Hermanos, 6801 Pacific Boulevard, Huntington park, CA; July 26, 2000 – Sanchez Bros., 1942 W. 47th St., Chicago, IL; September 26, 2000 – Rivas Boots, 2623 W. Moreland, Phoenix, AZ.

- (c) See response to (a) and (b) hereof.
- (d) The mark is displayed on removable hangtags and labels sewn to shirts.
- (e) Arizona, California, Georgia, Illinois, Nevada, North Carolina, Texas, and Mexico.

INTERROGATORY NO. 2

If Applicant made any use of Applicant's mark in the U.S. or in connection with clothing prior to the earliest date of first sale or shipment set forth in response to Interrogatory No. 1(a), or if there has been no such sale or shipment, describe each such use (see definition of "describe" in introductory paragraph E of this set of interrogatories).

RESPONSE TO INTERROGATORY NO. 2

Applicant made no prior use other than manufacture of clothing.

INTERROGATORY NO. 3

Identify the class of customers in the U.S. to which Applicant offers to directly sell its clothing bearing Applicant's mark (i.e., wholesalers, distributors, retailers, directly to the purchasing public, etc.) and set forth the method and manner of distribution and/or sale of such clothing from Applicant to the ultimate consumer.

RESPONSE TO INTERROGATORY NO. 3

Applicant sells clothing to retailers, wholesalers, and directly to the purchasing public in Applicant's own retail establishment.

INTERROGATORY NO. 4

State separately in dollars the approximate annual sales of clothing by Applicant under Applicant's mark in the U.S. for each of the last five calendar years.

PROOF OF SERVICE

I am over the age of 18 years, employed in the County of Los Angeles, and not a party to the above entitled action. My business address is 9250 Wilshire Blvd., Suite 325 Beverly Hills, California 90212.

On October 3, 2003, I served:

1. Applicant's Motion For Leave To Reply And Reply To Opposition To Applicant's Motion For Summary Judgment And Applicant's Opposition To Opposer's Cross-Motion For Summary Judgment (21 Pages);
2. Declaration Of Jessica J. Slusser In Support Of Applicant's Motion For Leave To Reply And Reply To Opposition To Applicant's Motion For Summary Judgment And Applicant's Opposition To Opposer's Cross-Motion For Summary Judgment (3 Pages);
3. Certificate of Mailing (1 page); and
4. Proof of Service (1 page)

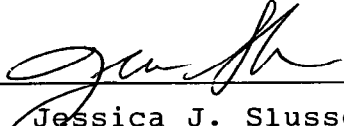
to:

Mr. Stuart J. Friedman, Esq.
NIXON PEABODY LLP
8180 Greensboro Drive, Suite 800
McLean, VA 22102

[X] BY MAIL: I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Beverly Hills, California, in the ordinary course of business. I am aware that on the motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing shown on this proof of service.

[X] FEDERAL: I declare, under penalty of perjury under the laws of the United States that the foregoing is true and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 3, 2003, at Beverly Hills, California.



Jessica J. Slusser